

(2023) 04 CAT CK 0003

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00298, 00482, 00611 Of 2022

Ajitkumar

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 05-04-2023

Acts Referred:

Prevention Of Sexual Harassment Act, 2013 — Section 4(1), 4(2), 4(2)(c), 9, 11

Citation : (2023) 04 CAT CK 0003

Hon'ble Judges : Sunil Thomas, Member (J); K.V. Eapen, Member (A)

Bench : Division Bench

Advocate : N. Unnikrishnan, Thomas Mathew Nellimoottil

Final Decision : Dismissed

Judgement

Sunil Thomas, Member J

1. Shorn off all unnecessary factual and legal details, extensively and repeatedly narrated in all the above three O.As, the essential facts which are necessary for the consideration of the issues involved in the above O.As can be summarized as follows:-

2. The applicant in all the above O.As is presently the Senior Statistical Officer of the National Statistics Office (NSO), Kottayam. One lady (herein after referred to as "complainant") was engaged as the Survey Enumerator in the above office under the applicant. While so, the complainant submitted two complaints dated 18.02.2022 and 08.03.2022 to the Deputy Director General, Regional Office, Thiruvananthapuram alleging that the applicant herein had harassed her at workplace on several occasions. The allegations included, abusing, scolding and harassing her in front of others in the office. During lockdown period she alone was called to the office and made to work at the office, and to sit even during late hours. She was made to work of MTS even when the MTS was available. Further, the applicant had made unsolicited oral advances towards her and one day he pressed her waist and made unwarranted comments. She immediately

left the office. The details of such instances are narrated in the complaint dated 18.02.2022. It discloses that even before the written complaint, she had shared it with the Deputy Director General (RO) who had initiated some general preventive measures in the office. When this continued after giving the 2nd complaint dated 08.03.2022, the complainant is stated to have resigned from the job.

3. In the light of the above complaint, memo dated 23.02.2022 was served on the applicant. The crux of the allegations contained therein reads as follows: -

"Grievance was reported to SRO In-charge about 7 to 8 months back about the inappropriate behaviour of the recently terminated Service Supervisor (on contract basis) and it was found that it was not properly dealt with by the in-charge. That though the grievance was communicated verbally only as per the information shared by the in-charge on 18.02.2022, it was felt that the complaint was about a grave misbehaviour to a female employee at workplace by terminated SS. It is stated that the matter require deep, prompt and timely action. This lapse on the part of the SRO in-charge is viewed seriously and advised not to repeat the same in future."

The above Memorandum further alleged that there was frequent employee dropout from the Regional Office, Kottayam which had affected the functioning of the office. It was further alleged that contrary to the clear direction issued from the Regional Head, the applicant had relieved an employee who was already terminated. It was an invalid order and hence had to be corrected by the Regional Head. Memo further alleged that though details of the opening and closing of the office was sought, only partial information was furnished by the applicant. On the basis of the above allegations, the applicant was directed to be careful in his conduct in future. Applicant submitted a reply dated 21.03.2022 denying all the allegations raised in the above memo.

4. Subsequently, by communication dated 04.05.2022, the applicant was removed as the in-charge of SRO, Kottayam. Charge was given to another person who according to the applicant was junior to him. The applicant submitted a letter dated 10.05.2022 to the Deputy Director and sought the basis of allegation levelled against him to enable him to explain his position. This was replied by the Deputy Director stating that since she had forwarded the grievances of the complainant to the competent authority, she was not authorised to disclose the details. A detailed representation dated 19.05.2022 was submitted by the applicant.

5. Challenging the memo dated 23.02.2022 produced as Annexure A1, Annexure A6 memo dated 04.05.2022 and Annexure A8 memo dated 11.05.2022, the applicant had preferred O.A 298/2022. The relief sought in the application was to quash Annexures A1, A6 and A8.

6. In the meanwhile, by the order of the Ministry of Statistics and Programme Implementation dated 31.08.2022, the applicant was transferred to Thanjavur in

Tamil Nadu along with 4 other employees under the Ministry. Contending that the transfer was arbitrary, illegal, invalid and unjustified and contending that it was issued without any reason, the applicant had preferred O.A 482/2022. An interim order was granted on 02.02.2022 directing that the applicant shall not be relieved. The interim order is continuing. The relief sought in the above O.A was to quash the transfer order dated 31.08.2022 produced as Annexure A1 in the above O.A.

7. While the above two O.As were pending, in relation to the complaints submitted by the complainant, alleging sexual harassment in workplace at the hands of the applicant herein, an inquiry was ordered by communication dated 18.10.2022. The applicant was directed to be present in person for inquiry on 20th and 21st October 2022 at NSO (FOD Headquarters at New Delhi). The copy of the order dated 01.06.2022 constituting committee for prevention of sexual harassment in workplaces was also enclosed. It was further informed to the applicant that the copy of the complaint of the complainant has already been sent to him on 20.09.2022. It is seen that subsequently another communication dated 20.10.2022 was issued to the applicant informing that in spite of earlier instructions dated 18.10.2022 informing him about the inquiry proceedings, the applicant had not responded. Hence, the inquiry had to be adjourned to 3rd and 4th October 2022 and the applicant was directed to be present in court on the said dates. Accordingly, applicant has preferred O.A 611/2022 challenging Annexure A26, the communication dated 20.10.2022, Annexure A27(a), the office memorandum issued by the Ministry constituting a complaint mechanism to inquire into complaints of sexual harassment of women in workplace and Annexure A27(b) which was a communication of the Ministry dated 27.12.2022 addressed to all the Regional Offices and also the Head of Departments by the Ministry informing that only the above Committee constituted by the Headquarters alone can entertain applications. By an interim order all further proceedings pursuant to Annexure A26 were deferred by this Tribunal.

8. The respondents appeared and filed detailed objections in all the three O.As. It was contended by the learned Senior Panel Counsel for the contesting respondents that in the light of the interim orders granted by this Tribunal in O.As Nos. 482/2022 and 611/2022, the applicant was continuing in the same office in spite of transfer and the enquiry also could not be proceeded. Hence, the O.As needed to be heard urgently. Accordingly all the parties were heard. Since the parties are same, common questions of facts and law arises and all the pleadings are overlapping, all the O.As were heard together and are disposed of by this common order.

9. In OA No. 611 of 2022, the complainant had filed MA No. 1058 of 2022 to get herself impleaded. Since the complaints given by the complainant was the subject matter of the inquiry and the challenge to it in OA 611/2022 was being effectively defended by the respondents, it was felt that the impleading petition need not be allowed at the threshold. The applicant was informed that the

impleading petition will be considered only if it was found that her presence was essential for the proper adjudication of the OA. At the time of hearing, the learned counsel for the complainant who is the miscellaneous applicant in MA No. 1058 of 2022 on instructions submitted that she filed the application for impleading apprehending that if the request sought in OA No. 611 of 2022 was allowed and the inquiry proceedings were dropped she will be left without any remedy. It was stated that her grievance raised in her complaints were serious and was liable to be inquired into. She affirmed that she stands by the allegations raised against the applicant in both the complaints specifically the allegation of inappropriate behaviour and asserted that she intended to pursue her complaint to its logical conclusion. She affirmed that the allegations raised by her in both the complaints were true.

10. In the light of the distinct reliefs in the three OAs, the facts are separately analysed as follows:

OA No. 298 of 2022 –

11. In OA No. 298 of 2022 the grievance of the applicant was that he was given the charge of the Sub Regional Office, National Statistical Office at Kottayam on 31.5.2019. He has been discharging his functions without giving rise to any complaint. However, he was issued with Annexure A1 memorandum dated 23.2.2022 wherein specific allegations were alleged against him. It was alleged in the above memo that the SRO in-charge was informed that there was an oral complaint about the inappropriate behaviour on the part of the recently terminated Supervisor. The complaint disclosed allegations of grave misbehaviour to a female employee. The matter required deep, proper and timely action. However, the SRO failed to view it seriously. Hence, by Annexure A1 the applicant was directed to not to repeat such acts in future. In Annexure A1 it was further alleged that frequent employee drop out has been observed from the office which had affected the work. It was further alleged that in spite of clear directions from the regional head, the applicant issued relieving order to a person who had already been terminated. It was an invalid action and the regional office had to intervene to cancel the communication. Yet another allegation against him was that pursuant to a direction of the regional office to give information regarding the details of office opening on holidays and working late hours, the applicant has given partial information which was found to be unsatisfactory. On the basis of these allegations the applicant was directed to be more careful in future in handling various matters relating to man power and office functioning.

12. According to the applicant, all the above allegations were absolutely bereft of any truth. It was contended by him that till female employees give a written complaint, no official action could be taken. If there was a violation of her right by her supervisor, she should have complained to the police. In this case except the 3rd respondent's statement no written complaint was given to the applicant as the head of office, nor any police complaint given. However, the applicant has

conducted sufficient inquiry and has taken necessary action.

13. Regarding the second allegation that there was frequent drop out of the staff, his explanation was that, most of the employees resign very shortly after joining the office, due to their inability to adjust to the field condition and nature of work. Regarding the allegation that he had issued the relieving order, the contention was that he had only followed the normal procedure and that he was at Rajakkad on the relevant day. Regarding the partial supply of information regarding opening of office, the stand taken by the applicant was that no particular register was kept regarding the opening of office and hence, he was not in a position to give the names of all officials who had attended the office on holidays and worked late hours.

14. Pursuant to his reply given as Annexure A3 to Annexure A1 he was served with Annexure A6 memorandum informing him that he has been removed from the charge of SRO in-charge, Kottayam with immediate effect. This order is under challenge in the OA. Annexure A6 was an order by which he was informed by the regional office that the details of the complaint lodged against the applicant, could not be furnished to him due to administrative reasons and since the action taken was within the purview of regional head. The relief sought in the OA was to quash Annexures A1, A6 and A8.

15. All the above allegations were vehemently opposed by the respondents through their reply statement. According to the respondents there was no notified sanctioned post of in-charge of SRO, Kottayam. A Senior Statistical Officer was assigned for the additional responsibility of managing SRO as in-charge and coordinating with the Regional office and such nomination did not carry any additional remuneration. This stand of the respondents seems to be justified in the light of Annexure R2. It is an order dated 27.8.2018 of the Deputy Director General (DDG), New Delhi by which it was stipulated that since there is no supervisory post of ISS officer at the SRO, one of the senior most suitable Senior Statistical Officer among the existing SSO in-charge is assigned for additional responsibility for managing and coordinating with the regional office. In the above circumstance the applicant cannot claim any right to be retained as in – charge, and removal of applicant from such a post cannot give rise to any cause of action. Further, the authority of the respondents to relieve him of the post of in-charge is unassailable.

16. On merits, the contention of the respondents was that by virtue of Annexures A1 and A6, no aspersion was cast on the applicant. It was stated that the decision to remove the applicant from the position of SRO in-charge was taken on administrative ground to facilitate a probe conducted against him. It was stated that he was removed from the charge of SRO on receipt of a complaint of serious nature against him from a female employee in the month of April, 2022. It was stated that the decision to remove the applicant from the position of SRO in-charge was taken purely on administrative grounds in view of the receipt of complaints of serious nature. Evidently, a very serious allegation of inappropriate

physical touch on a subordinate lady officer was attributed against the applicant, which is the subject matter of a domestic inquiry. This precisely is the subject matter in OA No. 611 of 2022. In the back ground of pendency of such a serious allegation which includes an inappropriate behaviour of the applicant, coupled with the earlier warning given to applicant, the respondents were perfectly justified in removing the applicant by issuing Annexure A6 to ensure that enquiry proceeds in a peaceful environment. No grievance can be raised by the applicant since he was not removed from any notified post.

17. In fact the applicant was not relieved of his post as in-charge for the reasons mentioned in Annexure A1. Evidently Annexure A6 is independent of Annexure A1. The reasoning given by us for rejecting the challenge to Annexure A6 should have normally disposed of the issue of removal of applicant as in-charge. However, since Annexure A1 was challenged in this OA, and detailed arguments were advanced touching on the merits of Annexure A1, we are inclined to consider that also. By Annexure A1, applicant was only warned regarding certain misconducts/lapses reported on his side. In fact in reply to Annexure A1 allegations, Annexure A3 reply was given which is reiterated in the Original Application also. Regarding the 1st charge in Annexure A1 that he failed to take proper action pursuant to a complaint of a female employee regarding inappropriate behaviour by a Supervisor, the stand of the applicant herein was that pursuant to the inquiry he contacted the female employees and inquired whether they have any grievance against that Supervisor. None of them reported any inappropriate behaviour. The stand of the applicant that if that female employee had any grievance she should have given it in writing or should have given complaint to the police, itself shows absolute callousness and how indifferently the superior handled a very sensitive and delicate issue. His reply indicates that he did not enquire about the allegations with the aggrieved person.

18. Regarding the further allegation that there was staff drop out, the answer given in Annexure A3 itself indicates that several employees had resigned. The stand of the applicant was that it was due to their inability to adjust to the field condition and nature of work. The very fact of consistent staff drop indicated that certain remedial measures from the side of the institution was necessitated which was not done. Regarding the third allegation of issuing the relieving order, the stand of the applicant was that such an order was not issued by him and on the relevant day he was out of station. In the reply statement it has been stated that an inquiry was conducted into that allegation and it was found that on the relevant day the applicant was in the office. Thus the stand taken by the applicant was found to be false. Regarding the last allegation that he had given incomplete factual details, the reply of applicant at paragraph 4 of Annexure A3 itself shows that he had given only incomplete replies. His explanation was that he was not in a position to give the details of names of the officials who had attended the office on holidays and worked late hours, since no register was maintained for it. It clearly shows the applicant who was the in-charge of the office was not even aware of what was happening in his office and that he was

not properly discharging his duties.

19. Evaluation of the entire material show that the respondents were perfectly justified in issuing Annexures A1 and A6 memos. The applicant cannot have any grievance in relation to Annexures A1, A6 and A8. There is no merit in the various contentions set up by the applicant and the removal of him from the charge of in-charge cannot be treated as punitive measure and was warranted in the back ground of raising of very serious allegations of inappropriate behaviour towards a female employee. No relief is liable to be granted in the above OA.

OA No. 482 of 2022 -

20. In the present OA, the applicant challenges Annexure A1 order dated 31.8.2022 by which the applicant was transferred from Kottayam, NSO office to NSO office at Thanjavur, Tamil Nadu. Challenging the transfer order, the applicant contended that he had an unblemished record of service. However, several memorandums have been issued to him raising vague allegations, and without furnishing any of the documents in support of the allegations. As a retaliatory measure he was removed from the post of SRO in-charge which has been challenged by him in OA No. 298 of 2022. During the pendency of that OA, the applicant has been transferred. Along with him, his wife who was also employed in the same office was harassed by transferring her and posting at MSME, Kottayam office. The applicant was transferred without any reason. As per paragraph 1.5 of Annexure A4 transfer policy every transfer should be on recommendation of the transfer and placement committee. Hence, the applicant submitted Annexure A5 representation dated 22.8.2022 raising his grievances. It was not considered properly. The action of the respondents offends fair and reasonable procedure as laid down in Dharmpal Sathyapal Limited v. Deputy Commissioner of Central Excise, Gauhati & Ors. [(2015) 8 SCC 519]. The action was punitive and malafide and hence, he sought to declare Annexure A1 as void and prayed to quash Annexure A1.

21. In the reply statement the respondents contended that earlier the applicant was removed from the post in-charge on receipt of a complaint of serious nature which was forwarded to the appropriate committee for investigation by the headquarters. The said decision to remove was taken on administrative ground to facilitate the probe by the above committee. After removal from the post of in-charge, the applicant has been disrupting the functioning of the SRO. Even progress of work was affected.

22. In the reply statement it was asserted that after the removal of the applicant from the position of SRO in-charge, Kottayam he has been disrupting the functioning of SRO, Kottayam in many ways and even the progress of work was affected. Due to non-co-operation of the applicant to new SRO in-charge and his inappropriate conduct in office, the 4th respondent was compelled to direct the head office to discharge him of the duties of SRO in-charge, Kottayam. As per clause 4.1 of the transfer policy of SS cadre, the maximum tenure at a particular

place was 7 years for SSO. The applicant had already served 21 years at SRO, Kottayam in two tenures with a break of one year only after 10 years. His spouse Deepa Krishnan, SSO served continuously for 22 years in the same office and hence both are clearly in consideration zone for transfer. The Ministry, by communication dated 5.9.2022 had directed this office to immediately relieve the officers transferred under the order. Accordingly, the wife of the applicant was relieved from the office on 5.9.2022 and no reliving order was issued to the applicant in adherence to the interim order passed.

23. It was further stated that the applicant belongs to Subordinate Statistical Service (SSS) and the Ministry of Statistics & Programme Implementation is the cadre controlling authority of such officers which is a Central Group-B service with all India transfer liability in terms of Rule 16 of SSS Recruitment Rules produced as Annexure R3. The designated Civil Service Board (CSB) considers and recommends all transfers which, inter alia, includes all cost transfer request etc. The matter of the applicant was placed before the CSB headed by the Director General, and consisting of four members. The committee was apprised about the recommendations of NSO (FOD) HQ and the ongoing investigation under Prevention of Sexual Harassment (POSH) Act against the applicant and also the vacancy position in the nearby stations. Keeping in view of the facts and compelling circumstances of the probe in progress by the ICC in the grievances filed by the applicant under the POSH Act and acute shortage of SSO in Thanjavur, the CSB recommended the transfer of the applicant from Kottayam to Thanjavur. Thereafter, the matter was placed before the Secretary-cum-Cadre Controlling Authority of SSS, who is the competent authority to take a final decision in all transfer and posting cases of the officers. The competent authority accepted the recommendation and accordingly, Annexure A1 order was issued.

24. Evidently, the applicant has completed 21 years of service in two spells at the present station and liable for transfer. It is also to be noted that serious allegations were raised against the applicant regarding misconduct which was the subject matter of an inquiry by the committee constituted under the POSH Act. Being a sensitive issue the matter has to be dealt with caution and care. Annexure R1 produced by the respondents which is a communication dated 28.7.2022 issued to the Joint Director by the Deputy Director indicates that pursuant to the communication of the regional office it was noted that the conduct of the applicant was not up to the mark. He was exhibiting abnormal behaviour like shouting, threatening, provoking/scaring the current SRO In-charge and was creating charged atmosphere in office which was non-conducive. It took also notice of the fact that investigation was pending under the POSH Act against the applicant. It was in this background he was recommended for transfer.

25. It is pertinent to note that the respondents have a specific case that after the issuance of the communication by the regional office, the applicant was indulging in strange behaviour of shouting, threatening, etc. in the office disrupting its

smooth functioning. Though detailed rejoinder has been filed, raising all possible technical objections, this allegation is not seen specifically challenged. Evidently, by Annexure R3, the CSB had considered the entire issue in its correct perspective. Being a high power committee consisting of senior officers no malafides can be attributed to them. A reference to Annexure A1 indicates that along with the applicant, four other persons including applicant's wife have been transferred. Though there is some substance in the contention of the applicant that virtually he alone was shifted from one state to another, in the light of the specific allegation of the respondents regarding the strange conduct of applicant which seems to be evident from records and that transfer was necessitated by virtue of the peculiar circumstances created by the applicant and that decision was taken at a very high level, such allegations pale into insignificance.

26. The above records indicate that the entire case of the applicant was considered and on purely administrative ground the applicant was transferred. They seem to have taken note of the fact that an allegation of alleged sexual harassment by the applicant on an employee who had to resign from the post was under investigation under the POSH Act and his subsequent conduct. Hence, we feel that the respondents were perfectly justified in issuing Annexure A1 order. Since the order was taken up at a very high level and in the absence of anything to establish that the committee was actuated by malafides and in the absence of anything to indicate violation of any statutory Rules, we are inclined to accept the contention of the respondents. Hence, there is no merit in the challenge to Annexure A1.

OA No. 611 of 2022 -

27. The applicant challenges Annexure A27 dated 20.10.2022 by which, pending OA No. 298 of 2022 and OA No. 482 of 2022, the applicant was directed to appear before the POSH committee constituted at Delhi. Along with Annexure A26, the applicant was supplied with Annexure A27(A) dated 22.11.2022 by which the said POSH committee was constituted and Annexure A27(B) dated 27.12.2022, which was a communication of the Head Quarters informing all the regional the entire offices of the respondents that only the committee constituted under Annexure A27(A) by the headquarters alone can deal with the complaints under the POSH Act. All these documents are attacked by the applicant on the specific ground that already the committee constituted by the regional office at Kottayam by Annexure A4 dated 18.11.2020 was in place. The above committee was also one constituted under the POSH Act by the regional office much prior to Annexure A27(A). That committee at regional level was still in place. Consequently, the applicant cannot be compelled to appear before a committee which had its functioning at New Delhi, to his predicament. It was further stated that under Section 11 of the POSH Act inquiry has to be conducted by the internal committee (ICC), which had already been constituted and the New Delhi committee cannot exercise any jurisdiction.

28. Apart from this main contention regarding Annexures A27, A27(A) and

A27(B), the applicant further contended that by virtue of Section 9 of the POSH Act, complaint has to be filed by the complainant within three months from the date of incident. However, in this case complaint was raised by her belatedly. No application for condonation of delay was submitted nor such application conveyed to the applicant. The applicant also pointed out that by virtue of Rule 7 framed under the POSH Act, which deals with the manner of inquiry, six copies of the complaints with the documents and list of witnesses have to be furnished to the committee. One copy has to be sent to the applicant. No such copy was given by the committee constituted under Annexure A4. It was also stated that on receiving a complaint by the complainant, the matter ought to have been referred to the local ICC by the 4th respondent. Instead of that, she forwarded it to the 5th respondent illegally. It was further contended that the proviso to Section 4 specifically states that where there are administrative units, each unit should constitute a committee at the unit level. Consequently, the jurisdiction of the New Delhi committee was ousted. A further contention set up by the applicant was that the constitution of the New Delhi committee by Annexure A27(B) was bad in so far as its jurisdiction was ousted by virtue of proviso to Section 4(1) of the Act. Yet another contention was that Annexure A27 proceedings were bad. He had no faith in the 5th respondent and the entire proceedings suffered from factual and legal infirmities which were pointed out by the applicant to the 5th respondent by Annexures A10, A12, A14, A16, A20, A25 and A27. In spite of these the 5th respondent did not take any corrective steps and the applicant has no faith in the 5th respondents, since he remained silent to the serious factual and legal infirmities pointed out by him.

29. Annexure A4 clearly shows that the Deputy Director at the regional office by OM dated 18.11.2020 had constituted a committee under the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. It was informed that the committee will consider complaints from employees related to sexual harassment as mentioned under the Act. It consisted of the Deputy Director General of the regional head of Thiruvananthapuram as the Chairperson and four other members. The precise contention of the applicant was that in the light of the existence of Annexure A4 committee, the Annexure A26 order directing him to appear before the POSH committee at New Delhi was invalid.

30. Before adverting to the above issue other minor contentions set up by the applicant needs to be addressed. Even though the applicant had been repeatedly contending that he had not received any documents from the committee under Annexure A4, it seems that the applicant has been trying to bypass the issue. The contention of the respondents was that Annexure A4 committee has ceased to exist by virtue of Annexure A27(A) order. Even though the applicant had contended that he had not received the copies from Annexure A4 committee, it is evident that the copies of the complaint was given to the applicant on 26.9.2022 and acknowledged by him. The copies of the complaints are produced by the applicant in the OAs also. It is also to be noted that in the above complaints very

serious allegations were raised against the applicant including allegations of inappropriate bodily touch on the victim. Though the applicant contended that he was not given a list of witnesses, it emerges from Annexure A15 that in Annexure A13 the details of the witnesses have been disclosed. It also emerges from the records that the complaint related to series of incidents which ended with her resignation. The complaint was submitted within a period of three months from that. Consequently, it cannot be said that the complaint was belated or time barred. The contention that the complaint was belated is not sustainable.

31. The main contention advanced by the learned counsel for the applicant in OA No. 611 of 2022 was that the constitution of the internal complaints committee by the FOD at New Delhi by virtue of Annexure A27(A) dated 22.11.2022 had no jurisdiction in the case of inquiry against applicant in the light of the existence of another competent committee constituted under the same statute and was in existence at the FSO. On the other hand, the contention of the respondents was that an internal complaints committee at national level was in vogue even before the introduction of the POSH Act, 2013. It was stated that the practice of the single ICC was in existence in the institution of the applicant even before the introduction of the POSH Act, 2013. It was stated that it was intended for a uniform, unbiased, dispassionate and competent method of probing complaints relating to sexual harassment of women at workplace. It was also intended to have all India jurisdiction. It was pointed out by the learned SPC that the committee stated to be constituted by virtue of Annexure A27(A) dated 22.11.2022 was not in fact constitution of a new committee, but only re-constitution of the existing committee, when the Member Secretary changed. This seems to be correct as evident from Annexure A27(A) itself which refers to the setting up a mechanism for prohibition of sexual harassment in workplace by OM dated 16.1.2019 and that Annexure A27(A) was only a reconstitution of that committee. It was stated that the committee was in place at the Field Operation Division (FOD) at HQ since long. Evidently, the applicant could not have pleaded ignorance regarding the existence or re-constitution of such committee, since Annexure A27(A) is seen marked to all NSOs. By virtue of Annexure A27(B) it was clarified by the FOD that the only committee in vogue under the POSH Act was Annexure A27(A) committee. Evidently the committee constituted by virtue of Annexure A4 is incompetent to go into any complaint regarding sexual harassment in workplace, by virtue of Annexures A27(A) and A27(B).

32. The learned SPC explained that the constitution of the committee by virtue of Annexure A4 was only an alert mechanism. Another contention set up by the learned Senior Panel Counsel was that Annexure A4 committee constituted at the regional level was not in accordance with Section 4(2) of the POSH Act. Section 4(2)(c) provides that one of the member shall be associated with a non-governmental organization or association committed to cause of women or a person familiar with the issues of sexual harassment. Evidently, in Annexure A4 committee no such person is seen included. Virtually that committee seems to be

not in accordance with Section 4(2) of the POSH Act. On the other hand Annexure A27(A) committee includes such a person. Hence, we are in agreement with the contentions of the respondents that ICC at the NSO level was not a properly constituted committee.

33. There is yet another reason for us to hold that the applicant shall not appear before Annexure A4 committee, notwithstanding the finding that it is not in existence. The Chairperson of the committee constituted by Annexure A4 is the DDG, NSO at Trivandrum. In all the OAs the applicant has extensively and repeatedly raised allegations of bias, motives and several allegations touching upon the impartiality of the above officer. It seems that the initial complaint was laid by the complainant to the above officer. Several references are made in the complaints that her grievances were disclosed to the above officer orally before written complaints were laid. It clearly shows that the above Chairperson of Annexure A4 may be called by the respondents as a witness in the inquiry. Though we are not at all convinced by the baseless allegations raised by the applicant against the above officer, still as an abundant caution, it may be appropriate that inquiry is conducted by the New Delhi committee. It is also to be noted that several baseless allegations are also raised in the present OA regarding the 5th respondent, who is the Member Secretary of the committee. He is alleged to be a biased person and the applicant has gone to the extent of saying that he has lost faith in respondent No. 5 since his requests were not considered by respondent No. 5. He is the Member Secretary of the committee headed by very senior officers. Though we are not at all attracted by the allegations raised by the applicant against respondent No. 5 as well as against the DDG, NSO of Trivandrum and we do not find any substance in such allegations of the applicant, we are inclined to believe that the applicant is under a misconception that by successively attributing bias and motives against all officers conducting inquiry against him, he can eventually escape from an inquiry or even if the inquiry proceeds, to challenge the enquiry proceedings on allegations of bias against the officers involved, at a later point of time.

34. Having considered the entire facts, we find absolutely no ground for interference in OA No. 611 of 2022. All the contentions of the applicant are liable to be rejected.

35. An analysis of the entire facts in relation to all the OAs affirms the applicant is not entitled to any relief. All the grounds set up by the applicant to challenge the various orders in the above OAs are without any basis. We find that no relief can be granted to the applicant. Though we are inclined to dismiss all the OAs, regarding OA No. 611 of 2022 we are inclined to direct the applicant to appear before the committee constituted under Annexure A27(A). A fresh notice shall be issued to the applicant fixing the date of his appearance before the authority. He shall be permitted to appear at New Delhi in accordance with the Rules applicable to the officers while attending in an inquiry at a distant place. In the alternative, the respondents would also be free to consider whether the applicant can be

permitted to appear online.

36. With these observations, all the OAs are dismissed. No costs. All the interim orders stands vacated.